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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,522	02/05/2001	Maria Altamura	205 010	4796

7590 09/17/2003

Abelman Frayne & Schwab  
150 East 42nd Street  
New York, NY 10017-5612

EXAMINER

COLEMAN, BRENDA LIBBY

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 09/17/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**Application No.  
**09/762,522**Applicant(s)  
**ALTAMURA et al.**Examiner  
**Brenda Coleman**Art Unit  
**1624**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Aug 27, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached ADVISORY ACTION

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_
- Claim(s) objected to: 27 and 31
- Claim(s) rejected: 21-26, 28-30, 32, and 33
- Claim(s) withdrawn from consideration: \_\_\_\_\_
8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

*Brenda Coleman*  
**BRENDA COLEMAN**  
**PRIMARY EXAMINER**  
**ART UNIT 1624**

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### ADVISORY ACTION

Claims 21-33 are pending in the application.

The period for reply continues to run FOUR MONTHS from the date of the final rejection. Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a) accompanied by the appropriate fee. The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. A reply within the meaning of 37 CFR 1.113 or a request for a continued examination (RCE) in compliance with 37 CFR 1.114 must be timely filed to avoid abandonment of this application.

The amendment filed August 27, 2003 under 37 CFR 1.116 in response to the final rejection has been considered but is not deemed to place the application in condition for allowance and will **not** be entered because: the new matter presented in the claims of the response filed August 27, 2003 is such that the definition of  $R_3$  (in claim 22) is  $-\text{CH}_2\text{Ar}$  where Ar has a different definition than  $\text{Ar}_1$ .

Additionally, the following amendments to the specification and claims raises new issues:

- a) The proposed amendment to the structure of formula (I) in the specification includes the variable  $R_5$ , which is not defined in the specification.
- b) The amendment proposed at page 4, line 12, does not correspond to the specification nor is it known what is meant by “ $-\text{NR}_8\text{R}_9 - \text{N}(\text{R}_{11})\text{CO}(\text{CH}_2)_h$ ; or -  $\text{COR}_{13}$ ; where  $R_5$  is H. There is no  $R_5$  within the definition of  $R_4$ .

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- c) The proposed amendment to the definition of  $R_{12}$  appears as such:  
and  $R_{12}$  is chosen among: morpholine, pyrrolidine optionally substituted with an hydroxy or hydroxymethyl, piperidine optionally substituted with a 4-hydroxy or 4-carboxyamido group [no comma separating] piperazine optionally substituted on the N-atom by **4-aminosulfonyl** [new matter],  $C_{1-3}$  **alkyl** [new matter], triazole, tetrazole, 5-mercapto-tetrazole, furan, thiophene, thiomorpholine optionally mon- or di-oxygenated on the S-atom, and **cyclohexan-1-yl**- [new matter] optionally substituted by a hydroxy group.
- d) The proposed amendment to the definition of  $R_9$  lacks proper directions to the deletion and insertion.
- e) The proposed amendment to claim 21 where the definition of  $R_4$  is  $-NR_8R_9$ ;  $-N(R_{11})CO(CH_2)_h$ ; or  $-COR_{13}$  in line 4 and  $-N(R_{11})CO(CH_2)_h$  which appears again in line 12 or  $-COR_{13}$  which appears again in line 18.

**Applicants are reminded that all rejections of the Office Action mailed on April 29, 2003 are herein maintained.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Coleman whose telephone number is (703) 305-1880. The examiner can normally be reached on Mondays and Tuesdays from 9:00 AM to 3:00 PM and from 5:30 PM to 7:30 PM and on Wednesday thru Friday from 9:00 AM to 6:00 PM.

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The fax phone number for this Group is (703) 308-4734 for “unofficial” purposes and the actual number for **OFFICIAL** business is **308-4556**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink that reads "Brenda Coleman". The signature is fluid and cursive, with the first name "Brenda" being more prominent than the last name "Coleman".

Brenda Coleman  
Primary Examiner AU 1624  
September 15, 2003